

**AZAD GOVERNMENT OF THE STATE OF JAMMU AND KASHMIR
LAW AND PARLTAMENTARY AFFAIRS DEPARTMENT
MUZAFFARABAD**

Dated the 9th June, 1985.

No. 1416/LD/85. The following Ordinance made by the President on the 9th day of June, 1985, is hereby published for general information:-

(ORDINANCE CXLIV OF 1985)

**AN
ORDINANCE**

to bring in conformity with the Injunctions of Islam the Law relating to the offence of Zina.

WHEREAS it is necessary to modify the existing Law relating to zina so as to bring it in conformity with the Injunctions of Islam as set-out in the Holy Quran and Sunnah;

AND WHEREASE the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by sub-section (1) of Section 41 of the Azad Jammu and Kashmir Interim Constitution Act, 1974, the President is pleased to make and promulgate the following Ordinance:-

1. **Short title and Commencement.**- (1) This Ordinance may be called the Offence of Zina (Enforcement of Hudood) Ordinance, 1985.
 - (2) It extends to the whole of Azad Jammu and Kashmir
 - (3) It shall come into force at once.
2. **Definitions.**- In this Ordinance, unless there is anything repugnant in the subject or context,-
 - (a) "adult" means a person who has attained, being a male the age of eighteen years or, being a female, the age of sixteen years, or has attained puberty;
 - (b) "hadd" means punishment ordained by the Holy Quran or Sunnah;
 - (c) "unmarriage" means marriage which is not void according to the personal Law of the parties, and "married" shall be construed accordingly;
 - (d) "muhsan" means-
 - (i) a Muslim adult man who is not insane and has had sexual intercourse with a Muslim adult woman who, at the time he had sexual intercourse with her, was married to him and was not insane; or
 - (ii) A Muslim adult woman who is not insane and had sexual intercourse with a Muslim adult man who,

at the time she had sexual intercourse with him, was married to her and was not insane; and

- (e) “tazir” means any punishment other than hadd, and all other terms and expressions not defined in this Ordinance shall have the same meaning as in the Penal Code (Act XLV of 1860), or the Code of Criminal Procedure, 1898 (Act V of 1898).

3. **Ordinance to override other Laws.-** The provisions of this Ordinance shall have effect notwithstanding anything contained in any other Law for the time being in force.

4. **Zina.-** A man and a woman are said to commit “Zina” if they willfully have sexual intercourse without being validly married to each other.

Explanation: Penetration is sufficient to constitute the sexual intercourse necessary to the offence of zina.

5. **Zina liable to hadd.-** (1) Zina is Zina liable to hadd if:-

- (a) it is committed by a man who is an adult and is not insane with a woman to whom he is not, and does not suspect himself to be, married; or
- (b) It is committed by a women who is an adult and is not insane with a man to whom she is not, and does not suspect herself to be married.

(2) whoever is guilty of Zina liable to Hadd shall, subject to the provision of this Ordinance.

- (a) if he or she is a muhsan, be stand to death at public place; or
- (b) if he or she is not a muhsan, be punished, at a public place, with whipping numbering one hindered stripes.

(3) No punishment under sub-section (2) shall be executed until it has been confirmed by the Court to which an appeal from the order of conviction lies; and if the punishment be of whipping, until it is confirmed and executed, the convict shall be dealt with in the same manner as if sentenced to simple imprisonment.

6. **Zina-bil-jabr.-** (1) A person is sad to commit zina-bil-jabr if he or she has sexual intercourse with a woman or man, as the case may be, to whom he or she is not validly married, in any of the following circumstances, namely:-

- (a) against the will of the victim,
- (b) without the consent to the victim,
- (c) with the consent of the victim, when the consent has been obtained by putting in fear of death or of

hurt, or

- (d) with the consent of the victim, when the offence knows that the offender is not validly married to the victim and that the consent is given because the victim believes that the offender is another person to whom the victim is or believes her-self or himself to be validly married.

Explanation: Penetration is sufficient to constitute the sexual intercourse necessary to the offence of zina-bil-jabr.

(2) Zina-bil-jabr is zina-bil-jabr liable to hadd if it is committed in the circumstance specified in sub-section (1) of Section 5.

(3) Whenever is guilty of zina-bil-jabr liable to hadd shall, subject to the provisions of this Ordinance.-

- (a) if he or she is a muhsan, be stoned to death at a public place; or
- (b) if he or she is not a muhsan, be punished with whipping numbering one hundred stripes, at a public place, and with such other punishment, including the sentence of death as the Court may deem fit having regard to the circumstances of the case.

(4) No punishment under sub-section (3) shall be executed until it has been confirmed by the Court to which an appeal from the order of conviction lies; and if the punishment be of whipping, until it is confirmed and executed, the convict shall be dealt with in the same manner as if sentenced to simple imprisonment.

7. **Punishment for zina or zina-bil-jabr where convict is not an adult.**- A person guilty of zina or zina-bil-jabr shall, if he is not an adult, be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both, and may also be awarded the punishment of whipping not exceeding thirty stripes;

Provided that, in the case of zina-bil-jabr, if the offender is not under the age of fifteen year, the punishment of whipping shall be awarded with or without any other punishment.

8. **Proof of zina bil-jabr liable to hadd.**- Proof of zina, or zina-bil-jabr, liable to hadd shall be in one of the following forms, namely:-
- (a) the accused makes before a Court of competent jurisdiction a confession of the commission of the offence; or
 - (b) at least four Muslim adult male witnesses, about whom the Court is, satisfied, having regard to the requirements of

tazkiyah al-shuhood, that they are truthful persons and abstain from major sins (kabair) give evidence as eye-witnesses of the act of penetration necessary to the offence;

Provided that, if the accused is a non-Muslim, the eye-witnesses may be non-Muslims.

Explanation: In this section "Tazkiyah Al-shauhood" means the mode of inquiry adopted by a Court to satisfy itself as to the credibility of a witness.

9. **Ceases in which hadd shall not be enforced.**- (1) In a case in which the offence of zina or zina-bil-jabr is proved only by the confession of the convict, hadd, or such party of it, as is yet to be enforced, shall not be enforced if the convict retracts his confession before the hadd or such part is enforced.
- (2) In a case in which the offence of zina or zina-bil-jabr is proved only by testimony, hadd, or such part of it as is yet to be enforced, shall not be enforced if any witness resiles from his testimony before hadd or such part is enforced so as to reduce the number of eye-witnesses to less than four.
- (3) In the case mentioned in sub-section (1) the Court may order retrial.
- (4) In the case mentioned in sub-section (2), the Court may award tazir on the basis of the evidence on record.
10. **Zina or zina-bil-jabr liable to tazir.**- (1) Subject to the provisions of section 7, whoever commits Zina or zina-bil-jabr which is not liable to hadd, or for which proof in either of the forms mentioned in section 8 is not available and the punishment, of qazf liable to hadd has not been awarded to the complainant, or for which hadd may not be enforced under this Ordinance, shall be liable to tazir.
- (2) Whoever commits zina liable to tazir shall be punished with rigorous imprisonment for a term which may extend to ten years and with whipping numbering thirty stripes, and shall also be liable to fine.
- (3) Whoever commits zina-bil-jabr liable to tazir shall be punished with imprisonment for a term which may extend to twenty-five years and, if the punishment be one of imprisonment; shall also be awarded the punishment of whipping numbering thirty stripes.
11. **Kidnapping, abducting or inducing woman to compel for marriage, etc.**- Whoever Kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment for life and with whipping not

exceeding thirty stripes, and shall also be liable to fine; and whoever by means of criminal intimation as defined in the Penal Code (Act XLV of 1860), or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid.

12. **Kidnapping or abducting in order to subject person to unnatural lust.**- Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to the unnatural lust of any person or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with death or rigorous imprisonment for a term which may extend to twenty five years, and shall also be liable to fine and, if the punishment with death or rigorous imprisonment for a term which may extend to twenty five years, and shall also be liable to fine and, if the punishment be one of imprisonment, shall also be awarded the punishment of whipping not exceeding thirty stripes.
13. **Selling person for purposes of prostitution, etc.**- Whoever sells lets to hire, or otherwise disposes of any person with intent that such person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any time be employed or used for any such purpose, shall be punished with imprisonment for life and with whipping not exceeding thirty stripes, and shall also be liable to fine.

Explanation:

- (a) When a female is sold, let for hire, or otherwise disposed of to a prostitute or any person who keeps or manages a brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution.
- (b) For the purposes of this Section and Section 18, 'illicit intercourse' means sexual intercourse between person not united by marriage.
14. **Buying person for purposes of prostitution, etc.**- Whoever hires or otherwise obtains possession of any person with intent that such person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any time be employed or used for any such purpose, shall be punished with imprisonment for life and with whipping not exceeding thirty stripes, and shall also be liable to fine.

Explanation: Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female shall, until the contrary is proved to be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitute .

15. **Cohabitation caused by a man deceitfully inducing a belief of unlawful marriage.**- Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him to believe that she is lawfully married to him and to cohabit with him in that belief, shall be punished with rigorous imprisonment for a term which may extend to twenty-five years and with whipping not exceeding thirty strips, and shall also be liable to fine.
16. **Enticing or taking away or detaining with criminal intent woman.**- Whoever takes or entices away any woman with into that she may have illicit intercourse with any person, or conceals or detains with that intent any woman, shall be punished with imprisonment of either description for a term which may extend to seven years and with whipping not exceeding thirty stripes, and shall also be liable to fine.
17. **Mode of execution of punishment of stoning to death.**- The punishment of stoning to death awarded under section 5 or section 6 shall be executed in the following manner, namely:-
- Such of the witnesses who deposed against the convict as may be available shall start stoning him and, while stoning is being carried on, he may be shot dead, whereupon stoning and shooting shall be stopped.
18. **Punishment for attempting to commit an offence.**- Whoever attend to commit an offence punishable under this Ordinance with imprisonment or whipping, or to cause such an offence to be committed, and in such attempt does not any act towards the commission of the offence, shall be punished with imprisonment for a term which may extend to one-half or the longest term provide for that offence, or with whipping not exceeding thirty stripes, or with such fine as is provided for the offence or with any two of, or all, the punishments.
19. **Application of certain provisions of Penal Code (Act XLV of 1860 and amendment.**- (1) Unless otherwise expressly provide in this Ordinance, the provisions of Sections 34 to 38 of Chapter II, Section 63 to 72, of Chapter III and Chapter V and VA of the Penal Code (Act XLV of 1860), shall apply, mutatis mutandis respect of offence under this Ordinance.
- (2) Whoever is guilty of the abetment of an offence liable to hadd under this Ordinance shall be liable to the punishment provided for such offence as tazir.

- (3) In the penal Code (Act XLV of 1860).-
- (a) Section 366, section 372 section 373 section 375 and section 376 of Chapter XVI and section 493, section 497 and 498 of Chapter XX shall stand replaced; and
- (b) in section 367, the words and comma “or to the unnatural lust of any person, “shall be committed.

20. **Application of Code of Criminal Procedure (Act V of 1898) and amendment.**- (1) The provisions of the Code of Criminal Procedure, 1898 (Act V of 1898) , hereinafter in this section referred to the Code, shall apply, mutatis mutandis, in respect of cases under this Ordinance;

Provided that, if it appear in evidence that the officer has committed a different offence under any other law, he may, if the Court is competent to try that offence and award punishment therefore, be convicted and punished for that offence.

Provided further that offences punishable under this Ordinance shall be triable by a Tehsil Criminal Court, except offences under Section 5, 6 and 12, which shall be triable by a District Criminal Court.

(2) An appeal from order of conviction of a person by the Tehsil Criminal Court shall lie to the District Criminal Court and appeal from the orders of the District Criminal Court under this Ordinance shall lie to the Azad Jammu and Kashmir Shariat Court.

(3) The provisions of Section 198 Section 199 Section 199-A or Section 199-B of the Code shall not apply to the cognizance of an offence punishable under section 15 or section 16 of this Ordinance.

(4) The provisions of sub-section (3) of Section 391 or Section 393 of the Code shall not apply in respect of the punishment of whipping awarded under this Ordinance.

(5) Notwithstanding anything contained in any other law for the time being in force, if a member of the District Criminal Court or Tehsil Criminal Court as the case may be, is of any reason unable to attend the sitting, the other member of the court may hear and decide bail application or grant remand or adjournment under section 167 and 344 of the Criminal Procedure Code, 1898, respectively.

(6) The provision of Chapter XXIX of the Code shall not apply in respect of punishments awarded under Section 5 or section 6 of this Ordinance.

(7) In the Code, section 561 shall stand repealed.

21. **Application of the Azad Jammu and Kashmir Islami (Tazirati Qawanin Nafaz Act, 1974.**- Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the

provisions of section 23, section 25, section 28 and section 31 of the Azad Jammu and Kashmir Islami (Tazirradi) Qawanin Nafaz Act, 1974, (Act XI of 1974) shall apply, mutatis mutandis in respect of cases under the Ordinance.

22. **Presiding Officer of Court to be Muslim.**- The Presiding Officer of the Court by which a case is tried, or an appeal is heard, under this Ordinance shall be a Muslim:

Provided that, if the accused is a non-Muslim, the Presiding Officer may be a non-Muslim.

23. **Pending cases.**- Nothing in this Ordinance shall be deemed to apply to the cases pending before any court immediately before the commencement of this Ordinance, or the offences committed before such commencement.

24. **Savings.**- Notwithstanding any judgment, decree or order of any court including High Court, every thing done, all actions taken, notifications issued, orders or appointments made, proceedings initiated, jurisdiction or powers exercised under the provisions of Zina (Enforcement of Hudood) Ordinance, 1979 (Ordinance XXX of 1979), or its succeeding Ordinances issued from time to time shall be deemed to have been validly done, taken, issued, made, initiated or exercised under this Ordinance.

25. **Repeal.**- The offence of Zina (Enforcement of Hadood) Ordinance, 1985 (Ordinance XLIV of 1985) is hereby repealed.

Sd/-
(Major General (R) Abdul Rehman Khan)
President,
Azad Jammu & Kashmir.
